

**MONTANA FIRST JUDICIAL DISTRICT COURT
LEWIS AND CLARK COUNTY**

JOHNNY C. RUTHERFORD, JR. and
MARY RUTHERFORD,

Plaintiffs,

v.

HEALTH CARE SERVICE
CORPORATION, a Mutual Legal
Reserve Company, d/b/a Blue Cross and
Blue Shield of Montana, and the STATE
OF MONTANA,

Defendants.

Cause No. ADV-2023-789

**ORDER – PLAINTIFFS’
MOTION TO AMEND**

Before the Court is Plaintiffs Johnny C. Rutherford, Jr. and Mary Rutherford’s motion for leave to file a second amended complaint. John Morrison represents the Plaintiffs. Daniel J. Auerbach and Christy S. McCann represent Defendants, Health Care Service Corporation, a mutual legal reserve company, doing business in Montana as Blue Cross and Blue Shield of Montana (BCBS), and the Montana University System (MUS).

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1 Plaintiffs filed their original complaint in this matter on December
2 15, 2023. Plaintiffs filed their first amended complaint February 9, 2023.
3 Plaintiffs now seek leave to file a second amended complaint to include a class
4 action claim against BCBS.

5 Montana Rule of Civil Procedure 15 provides for liberal
6 amendment of pleadings when it would not prejudice the opposing party.
7 *Farmers Coop. Assn v. Amsden, LLC*, 2007 MT 286, ¶ 12, 339 Mont. 445,
8 171 P.3d 690. The decision to grant or deny an amended pleading is within the
9 discretion of the district court. *Hobble-Diamond Cattle Co. v. Triangle*
10 *Irrigation Co.*, 249 Mont. 322, 325, 815 P.2d 1153, 1155 (1991). However, a
11 court should not grant leave to amend when the party opposing the amendment
12 would incur substantial prejudice as a result of the amendment. *Eagle Ridge*
13 *Ranch Ltd. Pshp. v. Park County*, 283 Mont. 62, 66-67, 938 P.2d 1342,
14 1344-1345 (1997).

15 BCBS does not object to Plaintiffs' motion to amend the
16 complaint. In its response to Plaintiffs' motion, BCBS states it expressly
17 reserves all rights, defenses, and arguments regarding the second amended
18 complaint. Because the Montana Rules of Civil Procedure provide for liberal
19 amendment of pleadings and the motion is unopposed, the Court finds it
20 appropriate to grant leave for Plaintiffs to file their second amended complaint.

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ORDER

IT IS HEREBY ORDERED Plaintiffs' motion for leave to file a second amended complaint is **GRANTED**.

/s/ Mike Menahan
MIKE MENAHAN
District Court Judge

c: John Morrison, via email
Daniel J. Auerbach, via email
Christy S. McCann, via email

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Electronically Signed By:
Hon. Judge Mike Menahan
Fri, Nov 01 2024 12:49:28 PM